THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. No.17990 OF 2005

DATE: 17-08-2005

Between:

M/s. Sree Gowri Shankar Cashew Products,

Rep. by its Proprietor, M. Ganesh Raju,

Palasa, Srikakulam District.

.. Petitioner

And

The Assistant Commissioner (CT) (Int.),

Vizianagaram & two others

.. Respondents

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

And

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W.P. No.17990 OF 2005

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

We have heard the learned counsel for the petitioner and the learned Special Standing Counsel for Commercial Taxes and at their request the matter is taken up for final disposal at the admission stage.

Rule Nisi.

The petitioners prays for issuance of an appropriate writ particularly in the nature of Writ of *Mandamus* declaring the notice, dated 29-07-2005, issued by the 1st respondent herein purporting it to be under Section 45 of the A.P. Value Added Tax Act, 2005 read with Rules 56 and 57 of the A.P. Value Added Tax Rules, 2005 (for short 'the VAT Act and the Rules') detaining 457 cartons of cashew nut kernel being transported by the petitioner to its consignment agent, which are duly covered by Bill No.13, dated 28-07-2005, Waybill No.4085512, as illegal and arbitrary. The petitioner accordingly prays for issuance of a consequential direction directing the respondents to release the goods forthwith.

The proceedings, dated 05-08-2005, on the file of the Deputy Commissioner (CT) Vizianagaram, are self explanatory in their nature. The proceedings reveal that on 29-07-2005 at about 11-00 p.m., the Assistant Commissioner of Commercial Taxes (Intelligence), Vizianagaram Division noticed altogether 478 cartons of cashew nut kernel in the godowns of North Eastern Carrying Corporation, Aminsahebpeta, Ichapuram. That out of the total stock of 478 cartons of cashew nut kernel, 21 cartons (42 tins) of cashew nut kernel are not supported by any documents such as sale invoice, way bill etc. On the enquiries made at the godown premises of the transport company, none

came forward and claimed the ownership of the said 21 cartons (42 tins) of cashew nut kernel. It is under those circumstances, the goods i.e. 21 cartons (42 tins) of cashew nut kernel were treated as the own property of the Government and taken into custody by the department.

The Assistant Commissioner (CT) Vizianagaram, vide notice, dated 29-07-2005, in purported exercise of the power under Section 45 of the VAT Act and the Rules, seized the entire stock of 478 cartons of cashew nut kernel including the quantity of 457 cartons of cashew nut kernel, which are admittedly covered by Bill No.13, dated 28-07-2005, Waybill No.4085512 issued by the petitioner herein viz., M/s. Gowri Shankar Cashew Products, Palasa. The Assistant Commissioner (CT) (INT), Vizianagaram, having noticed that only 21 cartons of cashew nut kernel are not supported by any purchase bills, directed seizure of entire quantity of 478 cartons of cashew nut kernel including 457 cartons of cashew nut kernel, which are admittedly covered by the waybill.

We find it difficult to sustain that portion of the seizure order. The authority, in law, has no such power to detain the goods, which are covered by the waybills.

In the circumstances, we dispose of the writ petition directing the respondents herein to release 457 cartons of cashew nut kernel being transported by the petitioner to its consignment agent which are duly covered by Bill No.13, dated 28-07-2005, Waybill No.4085512

However, 21 cartons of cashew nut kernel, which are not supported by any waybill, need not be released in favour of any individual or company, since no claim has been made in respect of the same. It shall always be open to the respondents to make further enquiries, if they so desire, in accordance with law.

With the directions and observations as above, the Writ Petition is disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:17-08-2005.

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RAMESH RANGANATHAN, J

NOTE:

1) Furnish C.C. of the order by **WIRE** at party's costs.

(B/O)

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